

**ASSET PURCHASE AGREEMENT**

**by and between**

**ETHENTICA, INC., DEBTOR AND DEBTOR-IN-POSSESSION**

**as the Seller**

**and**

**TOPSPIN PARTNERS, LP**

**or its designee or assignee**

**as the Buyer**

**Dated as of February 7, 2002**

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68200.3

Schedules

Schedule 1.0	Inventory
Schedule 2.0	Furniture, Fixtures and Equipment
Schedule 3.0	Computer Assets
Schedule 4.0	Domain Rights
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Schedule 8.0	Assigned Contracts
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Schedule 10.0	Accounts Receivable
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Schedule 12.0	[Intentionally Omitted]
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THIS ASSET PURCHASE AGREEMENT, dated as of February 7, 2002, this "Agreement"), is made by and between Ethentica, Inc., Debtor and Debtor-In-Possession, a Delaware corporation (the "Seller"), and Topspin Partners, LP, a Delaware limited partnership, or its designee or assignee in accordance with Section 14.4 hereof (the "Buyer").

RECITALS

WHEREAS, the Seller is a provider of authentication products and security software services required for Internet commerce and communications (the "Business");

WHEREAS, the Seller filed a voluntary petition for relief commencing a case (the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California ("Bankruptcy Court"), assigned case number 01-14523 JB (the "Chapter 11 Case");

WHEREAS, on November 16, 2001, Buyer and Seller executed a Letter of Intent under which Buyer declared an interest in conducting due diligence with respect to the Business and, the acquisition of substantially all of the assets of the Seller subject to execution of an asset purchase agreement;

WHEREAS, Buyer desires to purchase substantially all of the assets of the Seller related to the Business and assume certain executory contract or contracts to which the Seller is a party (and to assume the liabilities of Seller relating thereto), upon terms and conditions acceptable to Buyer in its sole and absolute discretion, and the Seller desires to sell, convey, assign and transfer to Seller, substantially all of the assets and properties related to the Business, free and clear of all liens, claims and encumbrances except for certain limited obligations and liabilities

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which may be assumed by Buyer upon terms and conditions acceptable to Buyer in its sole and absolute discretion, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 363, 365 and 105 and other applicable provisions of the Bankruptcy Code;

WHEREAS, the assets to be sold by Seller to Buyer pursuant to the terms of this Agreement (the "Assets") will be sold pursuant to an order of the Bankruptcy Court approving such sale, under Bankruptcy Code Section 363, free and clear of all liens, claims and encumbrances against the Assets, except for any cure damages which may be assumed by Buyer upon terms and conditions acceptable to Buyer in its sole and absolute discretion, subject to the determination/allowability of such amounts by the Bankruptcy Court, pursuant to the Bankruptcy Code, which amounts must be acceptable to Buyer in its sole and absolute disretions

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, the parties hereto agree as follows:

#### ARTICLE I:

#### PURCHASE AND SALE OF ASSETS

1.1 Description of Assets. Pursuant to Sections 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions precedent set forth in this Agreement, at the Closing (as hereinafter defined), the Seller shall sell, assign, transfer, convey, and deliver to the Buyer, and the Buyer shall purchase and accept from Seller, all of the Seller's rights, title, and interests in, to and under all of the following assets, property, rights and claims of the Seller related to the Business, wherever located, real, personal or mixed, whether tangible or intangible, owned, held or used in the conduct of the Business by the Seller as the same shall exist on the

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Closing Date (as hereinafter defined), free and clear of all liens, claims, encumbrances and other interests in property as set forth in Section 363 of the Bankruptcy Code (collectively, the "Assets"):

The Assets shall include, without limitation:

- (a) all inventory of raw materials, work in process and finished goods of Seller, and all inventory of packaging and shipping supplies wherever located, as identified on Schedule 1.0 ("Inventory");
- (b) all machinery, equipment, vehicles, furniture, fixtures, supplies, accessories, spare parts, tools and other items of tangible personal property, with all assignable warranty rights and operating manuals and keys relating thereto as identified on Schedule 2.0 ("FFE");
- (c) all computers, software, and related property associated with the operation of the Business as identified on Schedule 3.0 ("Computer Assets").
- (d) Seller's internet domain name and all other rights of any kind associated with Seller's on-line business, including, to the extent assignable, all rights with respect to internet service providers, third party linking sites and all rights of Seller to owned and/or licensed proprietary, customized and mass market computer software and all computer hardware appropriate for the continued operation of Seller's on-line business as identified on Schedule 4.0 ("Domain Rights");
- (e) all of Seller's patents, patent applications and patent disclosures; all inventions (whether or not patentable and whether or not reduced to practice); all trademarks, service marks, trade dress, trade names and corporate names (including without limitation the name "Ethentica") and all the goodwill associated therewith; all registered and unregistered statutory and common law copyrights; all registrations, applications, renewals or common law rights for

any of the foregoing; all trade secrets, confidential information, ideas, formulas (whether developed or under development), know-how, manufacturing and production processes and techniques, research information, specifications, designs, plans, improvements, proposals, technical and computer data, documentation and software, financial, business and marketing plans, customer and supplier lists and related information, marketing materials, employee training materials, and product ideas under development (including those related to future promotions and product launches); to the extent transferable, all license rights with respect to intellectual property of third parties; to the extent transferable, all of Seller's rights under all confidentiality agreements, non-disclosure agreements, invention assignment agreements and similar agreements executed between Seller and any employee, consultant or agent of Seller or any other third party with respect to any intellectual property right of Seller described in this Section, and all other intellectual property rights of Seller as identified on Schedule 5.0 (together with the Domain Rights, the "Intellectual Property Rights");

(f) Seller's catalogs, price lists, mailing lists, subscription lists, customer and supplier lists and all other information as to sources rights of any kind associated with its merchandising business, including, without limitation, all databases containing such information, that pertain to or are necessary to operate the Business and, to the extent assignable, all owned and/or licensed proprietary, customized and mass market computer software and all computer hardware (the "Mailing Lists");

(g) copies of books and records, correspondence, files and computer programs and data and databases relating to the Business reasonably required by the Buyer (the "Data Bases");

(h) any of the Seller's executory contracts that the Buyer seeks to assume and Seller shall seek to assume and assign to Buyer pursuant to Bankruptcy Code Section 365, as identified on Schedule 8.0 (the "Assigned Contracts").

(i) All records and files pertaining to Seller's business, customers and suppliers, including, without limitation, all supplier, vendor, customer and agency lists, all sales data (including retail prices, product costing and product movement), correspondence with customers, customer files and account histories, and records of purchases from and correspondence with suppliers, but not including the corporate minute books of Seller (the "Customer Records").

(j) Any and all other Assets of the Business which are not specifically identified at paragraphs 1.1(a)-1.1(i) above and which are not designated as Excluded Assets under paragraph 1.2(i) through 1.2(viii) below.

1.2 Excluded Assets. Seller shall not sell, and Buyer shall not purchase, any of the following assets of Seller:

(i) trade and other accounts receivable, notes receivable and other rights to payment of money, including collections on employee advances and security deposits identified on Schedule 10.0 ("Accounts Receivable").

(ii) any of the rights of the Seller under this Agreement;

(iii) any rights of the Seller's bankruptcy estate under the Bankruptcy Code, including, but not limited to any avoidance actions ("Avoidance Actions"), but excluding any rights in, to, or relating to any of the Assets;

- (iv) any and all claims for damages against third-parties arising on or before the Closing Date ("Damage Claims"), except for claims in, to, or relating to the Assigned Contracts;
- (v) any contracts, agreements, instruments or licenses that are not Assigned Contracts;
- (vi) the corporate charter, taxpayer and other identification numbers, seals, minute books, stock transfer books and other documents relating to the organization and existence of the Seller;
- (vii) the Seller's director and officer liability insurance, including any and all rights relating to and arising thereunder; and
- (viii) cash and cash equivalents (the Debtor represents that it has no cash and will not have any cash at Closing)

1.3 Purchase Price. The aggregate consideration to be paid by Buyer for the purchase of the Assets shall be (i) the payment of United States dollars \$ ) to the Debtor, to be paid in cash or by wire transfer of immediately available funds at Closing, plus (ii) any and all amounts required to cure any prepetition defaults under the Assigned Contracts which cure amounts shall be paid directly by Buyer to the parties to the Assigned Contracts; the cure amounts and the terms and conditions of payment of same must be acceptable to Buyer in its sole and absolute discretion (the "Purchase Price"). Any deposit provided by Buyer to Seller under the terms and conditions of the Letter of Intent, or otherwise, shall be credited against the Purchase Price; if this Agreement is terminated pursuant to Section 13.1 hereof, any such deposit shall be returned to Buyer.

1.4 Purchase Price Allocation. Prior to the Closing, Buyer shall set the fair market values of the Assets of Seller and Seller shall use its best efforts to agree upon such values so as to execute with Buyer a joint certificate reflecting the same. The Purchase Price shall be allocated for all reporting purposes (including financial accounting and federal and state income tax purposes) in accordance with the individual fair market values of the Assets as set forth on such joint certificate. Neither Buyer nor Seller shall take a position in any report, statement or return required to be filed under any tax provision, or examination or other administrative or judicial proceeding that is inconsistent with such allocation.

1.5 Cure Costs. The Seller shall pay or otherwise discharge necessary costs of cure to achieve assumption and assignment of the Assigned Contracts (the "Cure Costs"), which Cure Costs must be agreed to between the Buyer and the contracting parties to the Assigned Contracts, prior to the hearing on the sale motion, to be conducted on February 13, 2002 at 10:00 a.m. All Cure Costs will either (i) be agreed upon by the Seller and each party entitled to receipt of a cure payment, or (ii) be determined by the Bankruptcy Court, in accordance with the Sale Order or such other order approving the assumption and assignment of an executory contract or unexpired lease. In the event that any Cure Cost allowed by the Bankruptcy Court is not acceptable to Buyer in its sole and absolute discretion, this Agreement shall be void and any deposit paid hereunder shall be returned to Buyer.

1.6 As-Is/Where-Is Sale. The Seller (which, for purposes of this Section 1.6 and Section 1.7, includes officers, directors and other representatives of Seller, including its and

their attorneys), makes no representation or warranty with respect to the Assets, the Assigned Contracts, the Assumed Liabilities or the Business express or implied, including any implied representation or warranty as to the condition, merchantability, suitability or fitness for a particular purpose of any of the Assets, and it is understood that, except for the express covenants of the Seller contained in this Agreement, the Buyer takes the Assets on an "as is" and "where is" basis.

1.7 Release. On the Closing Date, the Buyer shall release the Seller's current officers, directors and shareholders, from any and all claims, actions, causes of action and liabilities of any type related to actions taken or omitted by such persons in such capacities (whether known or unknown, whether disputed or undisputed, whether fixed or contingent, whether liquidated or unliquidated), other than claims for intentional misstatements or intentional omissions of material fact related solely to this Agreement or the transactions contemplated hereby. Nothing herein shall release the Seller from any claims that the Buyer may have against the Seller for a breach of this Agreement or the transactions contemplated hereby. The Buyer shall not file a claim in the Chapter 11 Case prior to the bar date order, except for any claim arising from the Seller's breach of this Agreement or the transactions contemplated thereby.

## ARTICLE II:

### ASSUMED LIABILITIES

2.1 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Buyer shall assume from the Seller and thereafter pay, perform or discharge in accordance with their respective terms the following liabilities (the "Assumed Liabilities"):

- (a) all of the Seller's ordinary course obligations for goods and/or services relating to or arising from the Assets, the Assigned Agreements and/or the Business incurred on or after the Closing Date;
- (b) all of the Cure Costs and any obligations and liabilities arising under and related to the Assigned Agreements incurred on or after the Closing Date; and
- (c) except as specifically provided for herein to the contrary, any obligation or liability for sales, use and other federal, state, local and/or other taxes attributable to the period beginning on or after the Closing Date.

## ARTICLE III:

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

3.1 Status of Buyer.

- (a) Corporate Existence and Status. Buyer is a limited partnership duly organized, entitled to conduct business and validly existing in good standing under the laws of the State of Delaware.

(b) Authorization.

(i) Buyer has the right, power and authority to enter into this Agreement and to consummate the purchase of the Assets and the other transactions contemplated by, and otherwise to comply with and perform its obligations under, this Agreement;

(ii) The execution and delivery by Buyer of this Agreement, and the consummation by Buyer of the purchase of the Assets and the other transactions contemplated by, and other compliance with and performance of its obligations under, this Agreement have been duly authorized by all necessary company action on the part of Buyer in compliance with governing or applicable agreements, instruments or other documents (including its charter documents (as amended)) and applicable law; and

(iii) This Agreement constitutes the valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms.

(c) Absence of Violations or Conflicts. The execution and delivery of this Agreement and the consummation by Buyer of the purchase of the Assets and the other transactions contemplated by, or other compliance with or performance under, this Agreement do not and will not with the passage of time or giving of notice or both, constitute a violation of, be in conflict with, or require any consent under, (i) any contract, agreement, commitment, undertaking or understanding to which Buyer is a party or to which it or any of its assets or properties are subject or bound, (ii) any judgment, decree or order of any governmental authority to which Buyer or any of its properties are subject or bound, (iii) any applicable law, or (iv) any governing or applicable agreements, instruments or other documents (including its charter documents (as amended)).

(d) No Governmental Consents Required. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority on the part of Buyer is required in connection with its execution or delivery of this Agreement or the consummation of the purchase of the Assets and the other transactions contemplated by, or other compliance with or performance under, this Agreement by Buyer, except for filings with the Bankruptcy Court, including the obtaining of the Sale Order.

3.2 Disclosures Generally. No representation or warranty by Buyer in this Agreement or in any Schedule, certificate or other agreement, instrument or document furnished or to be furnished to Seller pursuant to this Agreement or in connection with the purchase of the Assets or any of the other transactions contemplated by this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact, necessary to make the statements herein or therein not misleading.

#### ARTICLE IV:

##### REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Schedules. Seller has based its best efforts in the preparation of the Schedules and, to the best of Seller's knowledge, the Schedules are true, accurate and complete.

4.2 Notice to Creditors and Parties In Interest. Seller has provided due and adequate notice of the transaction contemplated by this Agreement to all creditors and parties in interest, who are/were entitled to receive such notice in its Bankruptcy Case so that all such creditors and

parties in interest have been afforded an opportunity to appear and be heard with respect to the terms and conditions of the sale contemplated herein.

4.3 No Adverse Claims. There are no creditors or parties in interest of Seller's Bankruptcy Case who, following entry of the Sale Order, shall have any rights, claims or interest in the Assets.

#### ARTICLE V:

##### MANDATORY CONDITIONS TO CLOSING

5.1 On or before the Closing, the following conditions must be satisfied:

- (a) entry of the Sale Order;
- (b) the Purchase Price Allocation pursuant to paragraph "1.4" shall be agreed to between the Buyer and Seller;
- (c) all Schedules hereto shall be prepared by the Seller and accepted by the Buyer;
- (d) the terms and conditions upon which the Assigned Contracts shall be assumed by the Buyer shall be agreed to in writing between the Buyer and the contracting parties to such Assigned Contracts, upon terms and conditions acceptable to Buyer in its sole and absolute discretion.
- (e) Buyer shall have completed its due diligence review of the Business and shall be satisfied with such review in Buyer's sole discretion;

(f) Buyer shall have executed written agreements to Buyer's satisfaction and in Buyer's discretion, with creditors of Seller deemed necessary by Buyer for the operation of the Business following the Closing Date, including without limitation the following: Tality/Cadence, Philips, ESM, Phoenix, Computer Associates, Omni Electronics, Jon La Freniere and Stephen Rowley.

5.2 In the event any of the conditions to Closing are not satisfied prior to the Closing, Buyer may unilaterally terminate this Asset Purchase Agreement and, Seller shall return to Buyer any deposit tendered in connection with same.

ARTICLE VI:

CLOSING AND CLOSING DATE

The closing of the sale of Assets and other transactions contemplated by this Agreement (the "Closing") shall take place at the office of Winthrop Couchot Professional Corporation, general insolvency counsel to the Debtor, in Newport Beach, California, commencing at 10:00 a.m., Pacific Standard time on February 14, 2002 or such other date following entry of the order of the Bankruptcy Court in form and substance acceptable to Buyer in its sole and absolute discretion approving the sale transaction set forth in this Agreement (the "Sale Order"); however, in no event shall the Closing take place later than February 28, 2002. The date of the Closing shall be referred to as the "Closing Date". Nothing contained herein shall prevent the parties to this Agreement from Closing at an earlier date mutually agreed to by the parties.

ARTICLE VII:

COVENANTS OF SELLER

7.1 Conduct of Business by Seller Pending the Closing. Prior to the Closing Date, Seller shall conduct its business in accordance with its obligations as a debtor-in-possession under the Bankruptcy Code. Except as otherwise contemplated under this Agreement or ordered by the Bankruptcy Court, from the date hereof until the Closing Date, without the prior written consent of Buyer, the granting of which shall be subject to Buyer's sole and absolute discretion, Seller shall refrain from selling, assigning, licensing, leasing, transferring or otherwise disposing of in whole or in part any of the Assets.

7.2 Affirmative Covenants. Subject to any conflicting obligation imposed on Seller as a debtor-in-possession under the Bankruptcy Code, from the date hereof to the Closing Date, Seller shall:

- (a) Maintain, consistent with Seller's post-petition past practice, the Assets in good repair, order and condition, reasonable wear and tear excepted, and use its best efforts to preserve its possession and control of all of the Assets;
- (b) Allow, at all reasonable times up to and including the Closing Date, Buyer's employees, attorneys, auditors, accountants and other authorized representatives, reasonable access to the facilities, plants, properties, books, records, documents and correspondence of Seller, in order that Buyer may conduct such investigation as it may desire of Seller's business; and
- (c) Use good faith best efforts to comply with all applicable laws relating to the conduct of Seller's business.

7.3 Consents and Closing Conditions. Seller shall use its best efforts to take such actions as may be appropriate in order to fulfill the closing conditions contained herein which are reasonably within its control,

7.4 Bankruptcy Court Approvals.

(a) Sale Procedures.

(i) Seller has (a) duly noticed a hearing upon and filed a motion (the "Sale Motion") with the Bankruptcy Court requesting an order of the Bankruptcy Court approving of the sale of Assets (the "Approval Hearing"); and (b) obtained an order of the Bankruptcy Court setting the procedures for bidding on the assets of the Seller ("Bidding Procedures Order"). The Approval Hearing is currently scheduled to take place on February 13, 2002 at 10:00 a.m., Pacific Standard Time, before the Bankruptcy Court. Seller shall provide Buyer and its counsel with a copy of any subsequent relevant motion or pleading filed, with the Bankruptcy Court so that Buyer may participate in any hearings before the Bankruptcy Court.

(ii) To the extent Buyer is not the successful purchaser of the Assets at the Approval Hearing and another person/entity purchases the Assets of the Seller at the Approval Hearing, Buyer shall be entitled to be (a) reimbursed any deposits of the Purchase Price provided to Seller, and (b) to be paid the "Overbid" and/or "Topping Fee" in the amount of \$ , as set forth in the Letter of Intent between the parties dated November 16, 2001.

(b) Court Approval of Sale. Pursuant to the Sale Motion, the Seller has requested entry of a Sale Order which (i) approves the sale of the Assets to Buyer on the terms and conditions set forth in this Agreement and authorizes Seller to proceed with this

transaction; (ii) includes a specific finding that Buyer is a good faith purchaser of the Assets; and (iii) states that the sale of the Assets to Buyer shall be free and clear of all interests in the Assets of any entity other than Seller's estate, including but not limited to all claims, liens and encumbrances of any nature, kind or description. Seller shall use its best efforts to obtain entry of the Sale Order. Upon the Closing, all of the Assets shall be transferred to Buyer, and Buyer shall then take title to the Assets, with such transfer(s) to be made, and title to be taken, free and clear of all claims, liens, mortgages, security interests, charges, encumbrances, taxes, obligations, assessments, covenants, title defects, pledges, encroachments, as well as any other interest or burden of any kind (collectively, "Claims"), and any valid Claims to attach to the proceeds. In the event that any of Seller's creditors or parties-in-interest, including, but not limited to, governmental units, parties to executory and other contracts, equity security holders, administrative expense claimants, and former or current employees (collectively, "Creditors") or any other Entity (as that term is defined in the Bankruptcy Code) asserting and/or holding a Claim against or interest in the Assets has not delivered to Seller documents releasing all such claims or other interests, the Sale Order shall authorize and direct Seller to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Assets. Pursuant to the Sale Order, after the Closing, Buyer shall not be successor to Seller, and no successor liability shall attach to Buyer by reason of the purchase of the Assets.

#### ARTICLE VIII:

##### COVENANTS OF BUYER

8.1 Consents and Closing Conditions. Buyer shall use its best efforts to obtain such consents from third parties and to take other actions as may be required in order to fulfill the closing conditions contained herein which are reasonably within its control.

8.2 Access to Records. After the Closing Date and upon reasonable prior notice to Buyer, Buyer shall permit Seller, at Seller's expense during normal business hours, to have reasonable access to such of the former business records of Seller as are from time to time then retained by Buyer.

8.3 License of Name. Buyer hereby grants to Seller the right to continue using the "Ethentica Debtor In Possession" name from and after the Closing to the extent reasonably required to liquidate Seller's other assets not purchased by Buyer and to wind up its affairs, including, but not limited to, matters arising out of or relating to Seller's Chapter 11 Case. Seller shall have no right to use the "Ethentica Debtor In Possession" name for any other purpose or for any period of time longer than that reasonably required to accomplish the purposes set forth in the immediately preceding sentence.

#### ARTICLE IX:

#### TAX MATTERS

9.1 Cooperation and Records Retention. From time to time, Seller and Buyer shall permit reasonable access, and shall cause their respective accountants and other representatives to permit reasonable access by each other, to the information that they or their accountants or other representatives have within their control and that may be reasonably necessary in connection with the preparation of any Return or the examination by any taxing authority or other administrative or judicial proceeding relating to any Return. Seller and Buyer shall retain or cause to be retained, until the applicable statutes of limitations (including any

extensions) have expired (or sooner if authorized by an order of the Bankruptcy Court and Seller first provides Buyer with reasonable notice of the information to be destroyed and a reasonable opportunity to take possession of such information if Buyer so elects), copies of all Returns for all tax periods beginning before the Closing Date, together with supporting work schedules and other records or information that may be relevant to such Returns.

9.2 Tax Elections and Permits. No new elections with respect to Taxes, or any changes in current elections with respect to Taxes, affecting the Assets shall be made by Seller after the date of this Agreement without the prior written consent of Buyer.

9.3 Sales and Transfer Taxes. Seller shall bear the responsibility for payment of taxes in the event that any sales, transfer or similar tax is imposed against Seller or Buyer as a result of the transactions contemplated hereby. Seller and Buyer shall mutually cooperate in order to minimize Seller's tax obligations resulting from the transactions contemplated hereby.

#### ARTICLE X:

#### BUYER'S CONDITIONS TO CLOSING

The obligation of Buyer to consummate the purchase of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment to Buyer's sole and absolute discretion of each of the following conditions:

10.1 Closing Documents. Seller shall have delivered all documents required, hereunder to be delivered by it at Closing, in each case in form and substance satisfactory to Buyer.

10.2 Approval of Bankruptcy Court. The Bankruptcy Court shall have entered the Sale Order.

#### ARTICLE XI:

##### SELLER'S CONDITIONS TO CLOSING

The obligation of Seller to consummate the sale of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment to Seller's sole and absolute discretion of each of the following conditions:

11.1 Deposit. Buyer shall have deposited, simultaneously with the execution of this Agreement, the sum of \$ , to be held in escrow by Seller's attorneys and not released to Seller until the Closing. Such deposit shall be returned to Buyer if this Agreement is terminated under Section 13.1 for any reason.

11.2 Closing Documents. Buyer shall have delivered any documents required to be delivered by it at Closing, in each case in form and substance reasonably satisfactory to Seller.

11.3 Approval of Bankruptcy Court. The Bankruptcy Court shall have entered the Sale Order.

ARTICLE XII:

DOCUMENTS TO BE DELIVERED AT CLOSING

12.1 Documents to be Delivered by Seller. At the Closing, Seller shall:

- (a) Deliver to Buyer a certified copy of the Sale Order;
- (b) Execute and deliver to Buyer (or its assigns) any and all instruments of sale, assignment and transfer and other documents reasonably requested by Buyer, including without limitation, a Bill of Sale in the form of Exhibit "I" hereto, in order to effect the transfer of the Assets to Buyer, or otherwise to facilitate the transactions contemplated hereby, such instruments to include, but not be limited to:
  - (c) Deliver to Buyer a "bring-down" certificate executed by an officer of Seller, and a certificate of incumbency and copy of the resolutions adopted by the Board of Directors of Seller, authorizing the execution and delivery of this Agreement and the other transactions contemplated hereby, duly certified as of the Closing Date by an officer of Seller; and
  - (d) To the extent any consents or approvals shall be necessary to any of the transactions herein contemplated, or to the sale of the Assets, Seller shall deliver to Buyer upon request copies of all such consents or approvals to the extent obtained by Seller.

12.2 Documents to be Delivered by Buyer. At the Closing, Buyer shall:

- (a) Deliver to Seller a "bring-down" certificate executed by an officer of Buyer, and a certificate of incumbency and copy of the resolutions adopted by the Board of

Directors of Buyer, authorizing the execution and delivery of this Agreement and the other transactions contemplated hereby, duly certified as of the Closing Date by an officer of Buyer;

(b) To the extent any consents or approvals shall be necessary to any of the transactions herein contemplated, or to the sale of Assets, Buyer shall deliver to Seller upon request copies of all such consents or approvals to the extent obtained by Buyer.

### ARTICLE XIII:

#### TERMINATION OF AGREEMENT

13.1 Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

- (a) by mutual written consent of Buyer and Seller;
- (b) upon written notice from Buyer to Seller (i) at any time prior to February 18, 2002 for any reason whatsoever or for no reason, or (ii) after February 18, 2002, if any of the conditions precedent to Buyer's obligations hereunder shall have become incapable of fulfillment through no fault of Buyer;
- (c) upon written notice from Seller to Buyer if any of the conditions precedent to Seller's obligations hereunder shall have become incapable of fulfillment through no fault of Seller; or
- (d) upon written notice from either party to the other party hereto if the Closing does not occur by February 28, 2002 (unless the failure to consummate the purchase and sale of the Assets by such date shall be due to the action or failure to act of the party seeking to terminate this Agreement or any affiliate thereof).

13.2 Effect of Termination. If this Agreement is terminated and the transactions contemplated hereby are abandoned pursuant to Section 13.1, then the parties shall not be obligated to proceed with the Closing and this Agreement shall be of no effect, except for the provisions of this Article 13 and Article 14, below (relating to, among other things, notices, contract construction and effect); provided, however, that such termination shall not affect the right of any party to bring an action against another party for a breach occurring prior to the termination or for a wrongful termination; provided, further, that, if this Agreement is terminated and Buyer is prepared to close (or would be prepared to close but for a breach of this Agreement by Seller), and the Assets are not sold to Buyer due to a the approval by the Bankruptcy Court of a higher and better offer for the Assets; then Buyer shall be paid the "Topping Fee" as set forth in the Letter of Intent dated November 16, 2001. If this Agreement is terminated under 13.1 above, any deposit made by the Buyer hereunder shall be returned to the Buyer.

ARTICLE XIV:  
MISCELLANEOUS

14.1 Notices. Any notices or other communications required or permitted hereunder (including, by way of illustration and not limitation, any notice permitted or required under Article 13 hereof) to any party hereto shall be sufficiently given when delivered in person, or when sent by certified or registered mail, postage prepaid, or one business day after dispatch of such notice with an overnight delivery service, or when delivered via facsimile and a confirmation of delivery of such facsimile is received by the sender, in each case addressed as follows:

In the case of Buyer:

Topspin Partners, L.P.  
Three Expressway Plaza  
Roslyn Heights, New York 11577  
Attn: Paul G. Lowell, Managing Director  
Facsimile: (516) 625-9499

With a copy to:

Alan C. Ederer, Esq.  
Westerman Ball Ederer Miller & Sharfstein, LLP  
170 Old Country Road  
Fourth Floor  
Mineola, New York 11501  
Facsimile: (516) 977-3056

In the case of Seller:

Ethentica, Inc.  
c/o Howard F. Kline, Esq.  
7 Saratoga  
Dove Canyon, California 92679  
Facsimile: (949) 767-5611

With a copies to:

Winthrop Couchot Professional Corporation  
3 Civic Plaza, Suite 280  
Newport Beach, California 92660  
Attn: Richard H. Golubow, Esq.  
Facsimile: (949) 720-4111

and

Mark O'Hare  
c/o Howard F. Kline, Esq.  
7 Saratoga  
Dove Canyon, California 92679

or such substituted address or attention as any party shall have given notice to the others in writing in the manner set forth in this Section 14.1.

14.2 Amendment. This Agreement may be amended or modified in whole or in part only by an agreement in writing executed by all parties hereto and making specific reference to this Agreement.

14.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which, taken together, shall constitute a single agreement. It shall not be necessary that all signatures appear on every counterpart so long as each party executes at least one counterpart.

14.4 Binding on Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective successors and assigns in accordance with the terms hereof. Seller may not assign its interest under this Agreement without the prior written consent of Buyer. Buyer shall have the right to designate any subsidiary and/or affiliate of Buyer to acquire any of the Assets and in the event of such designation, Buyer shall have no further liability hereunder.

14.5 Severability. In the event that any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and any other application thereof shall not in any way be affected or impaired thereby; provided, however, that to the extent permitted by applicable law, any invalid, illegal, or unenforceable provision may be considered for the purpose of determining the intent of the parties in connection with the other provisions of this Agreement.

14.6 Publicity. Any public announcements concerning the transaction contemplated by this Agreement shall be planned and released by Buyer, and Seller shall not act in this regard without the prior written approval of Buyer, which approval shall not be unreasonably withheld. This Section shall not impair any regulatory or fiduciary duties of Seller.

14.7 Headings. The headings in the sections and subsections of this Agreement and in the Schedules are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the parties.

14.8 Expenses. Except to the extent otherwise provided in this Agreement, Seller and Buyer each shall bear its own expenses incurred in connection with this Agreement and the transactions herein contemplated, including, but not limited to, legal and accounting fees and expenses.

14.9 Waivers. The parties may, by written agreement, (a) extend the time for the performance of any of the obligations or other acts of the parties hereto, (b) waive any inaccuracies in the representations contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with, or modify, any of the covenants or conditions contained in this Agreement, and (d) waive or modify performance of any of the obligations of any of the parties hereto; provided, that no such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall operate as a

waiver of, or an estoppel with respect to, any subsequent insistence upon such strict compliance other than with respect to the matter so waived or modified.

14.10 Entire Agreement; Law Governing. All prior negotiations and agreements between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings or agreements other than those expressly set forth herein or in a Schedule delivered pursuant hereto, except as modified in writing concurrently herewith or subsequent hereto. This Agreement shall be governed by and construed and interpreted according to the internal laws of the State of California, determined without reference to conflicts of law principles.

14.11 Return of Deposit. Seller acknowledges and agrees that in the event that this Agreement is terminated under Section 13.1 hereof, the \$ deposit will be returned to Buyer immediately upon such termination.

14.12 Further Assurances. Seller shall execute such documents as may be reasonably requested by Buyer in order to effect the transactions contemplated by this Agreement. Seller shall obtain releases of liens or UCC termination statements from each creditor having a lien on the Assets prior to distributing any proceeds of the sale contemplated by this Agreement to such creditor.



IN WITNESS WHEREOF, the Seller and Buyer have caused this Asset Purchase Agreement to be executed on their behalf by their duly authorized officers and/or representatives, as of the day and year first above written.

TOPSPIN PARTNERS, L.P.

By \_\_\_\_\_

Its \_\_\_\_\_

ETHENTICA, INC.

By Mel S. O'Kane

Its President and CEO

Part #	Item	Location	OMNI	Ethenica	Other	Total	Max Nr of Devices which can be made
100202	Glass		293,522	3,160		296,682	299,842
300203	Tactile Sense		1,835	69,460		71,295	36,542
800000	Watson (die)		4,668	730		5,398	325,628
	Watson (approx 250 die/wafer)			93	1,185	1,278	

**Schedule 2.0**  
**Furniture, Fixture and Equipment**

- Currently all Ethentica Office Furniture and equipment Located in CA is located at:  
Public Storage, IN.  
Laguna/ Moulton  
23572 Moulton Parkway  
Laguna Hills, CA 92653  
In storage units 1057,1043,3116,1086,3007,3094and 3136.
- Six complete sets of executive furniture , each set includes:
- Desk, chair, credenza with book shelf and a four draw double stacked set of file cabinets
- Two work benches
- Four Storage cabinets
- Three white boards
- Two small office conference table with three chairs each
- Touch Testing equipment for ethentica sensors

Exhibit /

Ethentica Fixed Asset List - Maryland Office

**Computer Equipment:**

- 2 500 MHz Pentium III computers (no serial numbers)
- 3 Dell Inspiron 7500 laptops with port replicators. Tag #'s Y8DKI, Y8FPS, Y8DKJ
- ✓ 2 HP Omnibook 6000 laptops. Serial #'s (S) TW03702198 and (S) TW03702192
- ✓ 1 HP Netserver LC 2000 Server. Serial # US02924039
- 1 Gateway 2000 17" monitor. Serial # MHS4H4039179
- 1 ViewSonic 19" monitor. Serial # MM94702536
- ✓ 1 HP LaserJet 3150 printer/fax/copier/scanner. Serial # USFP033034
- ✓ 1 HP Jet Direct 500X Print Server. Serial # SG02760230
  - 1 Cybex switch-and cables
  - 1 Lynksys 4-port Hub model # EZHUB04S
  - 1 Lynksys Ethernet cable/DSL router model # BEFSR11
  - 1 Netgear 16-port Fast Ethernet Switch model # FS516
  - 1 Netgear 4-port 10/100 Hub model # DS104
  - 1 Lynksys 5-port 10/100 Hub model # EFAH05W
  - 1 Netscreen Firewall. Serial # 57001950

**Phone System:**

TU Toshiba DKT 2600 Series telephone

**Furniture:**

- 3 U-shape desk units with peninsular tables
- 2 U-shape desk units
- 1 Conference table
- 10 conference room chairs
- 2 desk chairs
- 3 visitor (no-wheels) chairs
- 2 round kitchen tables
- 10 kitchen chairs
- 2 desk cubicles with file cabinets
- 1 reception desk
- 1 file credenza
- 1 mail credenza
- 1 TV Stand

**Other Equipment:**

- ✓ JVC 27"
- Polycom ViewStation Video Conference camera
- Microwave - Kenmore model # 565.60502990
- Refrigerator - GE model # TAX65Nxbwh

Exhibit \_\_\_\_\_

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**ETHENTICA  
HEWLETT PACKARD COLLATERAL**

Maryland Office

2 HP Omnibook 6000 Laptops  
1 HP Net Server LC 2000  
1 HP Laserjet 3150 Printer  
1 HP Jet Direct 500X Print Server

Headquarters

1 HP Monitor P 910  
1 HP Printer 5000N  
1 HP Server LC 2000  
3 HP Omnibook 6000 Laptops  
1 HP L1800 flat panel display  
4 HP Laserjet 6L  
2 Laserjet 3100

Sunnyvale (Amdahl)

13 HP Servers

Dallas

13 HP Servers (11 LPR's, 1 LC, and 1 Vectra)  
1 HP Pavilion  
2 HP Laserjet 6L

Other Equipment purchases post 21 Sept 0

ESD Simulator  
Heat Seal Machine  
Glass Scribe & Break Machine  
Injection Molding Tooling  
Hard Tooling  
Polycom View Station  
Misc Furniture

#### Schedule 4.0 Domain Rights

- Here is the domain name info.

If we want to keep any of the expired names we need to move now or we may lose them. Since they have expired ANYONE can just pay for them and have the name. You usually register for 2 years at a time. Cost is about \$ per name.

These are good until May 2002.

ETHENTICA.NET - will expire on 09-May-2002  
ETHENTICA.COM - will expire on 09-May-2002  
ETHENTICA.ORG - will expire on 09-May-2002

The Following are all expired but still available but to keep them we have to register them now, if we want any of them.

TRUSTENGINE.COM - EXPIRED  
TRUSTENGINE.NET - EXPIRED  
TRUST-ENGINE.COM - EXPIRED  
TRUST-ENGINE.NET - EXPIRED  
TRUSTONLINE.ORG - EXPIRED  
TRUSTONLINE.NET - EXPIRED  
ETHENTICAMAIL.COM - EXPIRED  
WEB-ENSURE.COM - EXPIRED  
WEBTHENTICATE.COM - EXPIRED  
KNOWNIDENTITY.COM - EXPIRED

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## SCHEDULE 5

### ETHENTICA PATENT LIST

Title	Jurisdiction	Application No.
Relief Object Sensor Adaptor	United States of America	09/435,011
Imaging Device for Relief Object and System and Method of Using the Image Device	Patent Cooperation Treaty	US00/11544
Imaging Device for Relief Object and System and Method of Using the Image Device	United States of America	09/558,634
Planar Optical Image Sensor and System for Generating an Electronic Image of a Relief Object for Fingerprint Reading	Patent Cooperation Treaty	US00/09008
Planar Optical Image Sensor and System for Generating an Electronic Image of a Relief Object for Fingerprint Reading	United States of America	09/477,943
Biometric Sensor	United States of America	09/804,683
Biometric Sensor	Patent Cooperation Treaty	US01/07860
Biometric Sensor	United States of America	09/804,684
Server-Side Implementation of a Cryptographic System	United States of America	09/666,519
Trust Arbitrage in Cryptographic Authentication	Patent Cooperation Treaty	US00/25754
Trust Arbitrage in Cryptographic Authentication	United States of America	09,655,756
Cryptographic Server with Provisions for Interoperability between Cryptographic Systems	Patent Cooperation Treaty	US/25816
Cryptographic Server with Provisions for Interoperability between Cryptographic Systems	United States of America	09,666,647
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Australia	15976/99
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Canada	2309956

Title	Jurisdiction	Application No.
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	China	98813272.9
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	European Patent Office	98960366.7
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Japan	2000-522552
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Korea, Republic of	2000-7005708
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Malaysia	P19805367
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Philippines	1-1998-03107
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Russian Federation	
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	South Africa	98/10843
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Taiwan	87119646
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	Thailand	047395
Method and System for Computer Access and Cursor Control Using a Relief Object Image Generator	United States of America	09/066,625
Electronic Commerce with Cryptographic Authentication	Patent Cooperation Treaty	US00/25814

Title	Jurisdiction	Application No.
Electronic Commerce with Cryptographic Authentication	United States of America	09/666,378
Electroluminescent Fingerprint Apparatus and Method	European Patent Office	98930210.4
Relief Object Image Generator	Australia	92129/98
Relief Object Image Generator	Canada	2301621
Relief Object Image Generator	China	98813678.3
Relief Object Image Generator	European Patent Office	98944629.9
Relief Object Image Generator	Japan	2000-510374
Relief Object Image Generator	Korea, Republic of	2000-7002390
Relief Object Image Generator	Malaysia	P19804058
Relief Object Image Generator	Philippines	I-1998-02275
Relief Object Image Generator	South Africa	97/11538
Relief Object Image Generator	Taiwan	86118101
Relief Object Image Generator	Thailand	045825
Integrated Oled Backlight for Planar Optical Contact Fingerprint Sensor	United States of America	60/244,759
Biometric Sensor	United States of America	29/132,771
System and Method of Lighting a Biometric Sensor	United States of America	60/234,635
Context Sensitive Dynamic Authentication in a Cryptographic System	Patent Cooperation Treaty	US00/25748
Context Sensitive Dynamic Authentication in a Cryptographic System	United States of America	09/666,377
Electroluminescent Fingerprint Apparatus and Method	United States of America	08/883,154
Relief Object Image Generator	United States of America	08/926,277

Title	Jurisdiction	Application No.
Electroluminescent Fingerprint Apparatus and Method	United States of America	09/401,480
Ethentica	China	2001011598
Ethentica	European Community	2047157
Ethentica	Hong Kong	200102145
Ethentica	Japan	2001-003640
Ethentica	Korea, South	41-2001-1027
Ethentica	Norway	200101094
Ethentica	Switzerland	00574/2001
Ethentica	Taiwan	90001831
Ethentica	United States of America	76/094,544
Ethenticate	United States of America	76/094,507
Ethentication	United States of America	76/094,508
Ethenticator	China	2001011599
Ethenticator	European Community	2047363
Ethenticator	Hong Kong	2001/02146
Ethenticator	Japan	2001-003638
Ethenticator	Korea, South	40-2001-2363
Ethenticator	Norway	200101095
Ethenticator	Switzerland	00575/2001
Ethenticator	Taiwan	90001829
Ethenticator	United States of America	76/094,529
Securing Your Digital World	China	2001011597
Securing Your Digital World	European Community	2046613
Securing Your Digital World	Hong Kong	2001/02144

Exhibit /

Title	Jurisdiction	Application No.
Securing Your Digital World	Japan	2001-003639
Securing Your Digital World	Korea, South	41-2001-1026
Securing Your Digital World	Norway	200101093
Securing Your Digital World	Switzerland	00573/2001
Securing Your Digital World	Taiwan	90001830
Securing Your Digital World	United States of America	76/094,502
Tactilesense	Australia	823409
Tactilesense	Brazil	822449021
Tactilesense	Canada	1,046,224
Tactilesense	China	200016801
Tactilesense	European Community	1,503,176
Tactilesense	Hong Kong	2000/02655
Tactilesense	Japan	2000-11133
Tactilesense	Korea, South	40-2000-5967
Tactilesense	Mexico	410,685
Tactilesense	Taiwan	89007131
Tactilesense	United States of America	75/775,899

SCHEDULE 8.0  
ASSIGNED CONTRACTS

1. AGREEMENT TO ASSIGN INVENTION AND PATENTS THEREON, dated March 15, 1999, by and between John E. La Freniere and Stephen H. Rowley as Assignors and Who? Vision Systems, Inc., as assignee; and
2. PATENT ROYALTY AGREEMENT, dated March 15, 1999, by and between John E. La Freniere and Stephen H. Rowley as Licensors and Who? Vision Systems, Inc., as Licensee.

**Ethentica, Inc.**

**Accounts Receivable**

ADVANTAGE COMMUNICATIONS LTD.  
AMERICAN EXPRESS TECHNOLOGIES  
BANK UNITED  
BIOMETRIC ENHANCED SOLUTIONS  
BIOMETRIC IDENTIFICATION  
BRUCE KNIGHT  
CISCO SYSTEMS  
DALLAS SEMICONDUCTOR  
DATA TREASURY CORPORATION  
EZME, LTD.  
GREAT CITIES, INC.  
GSCS, INC.  
ILI TECHNOLOGIES  
INGRAM MICRO  
KEYWARE TECHNOLOGIES  
LEAPS INFORMATION TECHNOLOGY  
MARSH AND MCLENNAN  
MCOM AS  
ME-ID SCHOOL SOLUTIONS  
PHILIPS COMPONENTS  
PHILIPS ELECTRONICS  
PHILIPS TAIWAN LTD  
STARTEK  
SUPERSALE.COM  
SYSTEM'S TECHNOLOGY INC  
TECH DATA CORP  
XETA INTERNATIONAL  
XL VISION

**Total Receivables**

all receivables are pre-petition; sales after that time were pre-paid

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